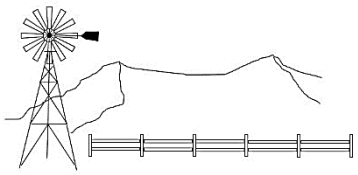

SAVE OUR RURAL TOWN

The Regional Planning Commission
320 W Temple Street
Los Angeles, CA 90012
Electronic Transmission of five [5] pages to rruiz@planning.lacounty.gov
PLEASE CONFIRM RECEIPT

July 11, 2019

Subject: Save Our Rural Town Comments on Proposed Amendment to the Acton Community Standards District

Reference: Project No. 2017-005014-(5)
Advance Planning Case No. RPPL2019003022's

Honorable Commissioners;

Save Our Rural Town ("SORT") understands that the Regional Planning Commission ("RPC") of the County of Los Angeles is contemplating an amendment to the Acton Community Standards District ("CSD") that is intended to clarify the prohibition on new drive-through establishments within the Community of Acton. Pursuant thereto, SORT respectfully and timely submits the following comments.

Though little substantive information is available in the Staff Report, SORT understands that the proposed amendment establishes two categories of drive-through facilities or services which are not subject to the existing CSD provision precluding new drive-through facilities and services. These categories are 1) facilities or services that were "lawfully established in compliance with all applicable ordinances and laws" prior to July 6, 2018; and 2) facilities or services that were "approved by the final decision maker" before July 6, 2018. The staff report identifies the drive-through services within Acton that are deemed to fall within the purview of the amendment without articulating the category associated with each; SORT assumes that the categorization set forth in the following table is correct.

Address	Category 1 Established	Category 2 "Approved"
2211 Sierra – Grizzly Bear	✓	✓
3830 Sierra – Jack in the Box	✓	✓
3750 Sierra – McDonald's	✓	✓
3910 Sierra – unidentified fast food business		✓
3820 Sierra – Shell car wash	✓	✓

Accordingly, it appears that there is only one location that has not yet been established with a drive-through facility but which is nonetheless designated by the staff report as "approved" for such a use. The location (3910 Sierra Highway) was addressed in Project R2014-00881 and Conditional Use Permit 2014-00037 in which an unspecified "drive through" fast food business was evaluated[1]. However, in this regard, the staff report is very much mistaken because the fast food drive-through addressed in Project R2014-00881 and Conditional Use Permit 2014-00037 has ***not*** been approved for the following reasons:

1. A Court of Competent Jurisdiction has set aside the environmental analysis that was certified for Project R2014-00881 and Conditional Use Permit 2014-00037, thus a material provision of the grant issued for this project has been declared invalid. Correspondingly, through operation of Condition 7 of the BOS action taken November 15, 2016 on Project R2014-00881/Conditional Use Permit 2014-00037, the permit is voided in its entirety, and all privileges granted therein have irretrievably lapsed[2]. Project R2014-00881 and Conditional Use Permit 2014-00037 are themselves rendered null and void, thus there is no "approval" for Project R2014-00881/Conditional Use Permit 2014-00037. To SORT's knowledge, the last drive- through facility or service that was "approved" in the Community of Acton occurred more than 20 years ago.

2. Section 22.24.030 of the "Rural Commercial" Zoning Ordinance and Section 22.52.030 of the "Development Program" Zoning Ordinance require that a Conditional Use Permit be secured before drive-through services can be established on C-RU-DP zoned property. And, before the County can "approve" a Conditional Use Permit, it must first prepare, certify, and adopt a legally sufficient environmental document at a properly noticed public hearing in accordance with the California Environmental Quality Act ("CEQA"). No legally sufficient CEQA document has been prepared for Project R2014-00881 or Conditional Use Permit 2014-00037, therefore neither Project R2014-00881 nor Conditional Use Permit 2014-00037 are "approved". Moreover, the requirement that a legally sufficient CEQA document be adopted before the County "approves" any discretionary permit is driven by state statute and cannot be eliminated or otherwise sidestepped by any zoning action (including the proposed CSD amendment).

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[1] The public was told that this project was to include a "local serving" Primo Burger fast food business that was not going to be "freeway serving" [see statements in the record by project proponents Gaudi and Zerounian). However, in this the public was shamefully misled because what was actually considered was an unspecified and unidentified 3,300 square foot fast food drive-through that can be developed by any national chain, including a Taco Bell, a Burger King, or even a "double" food business such as a "Green Burrito/Carl's Junior" (see Condition 1 of the BOS Package dated November 16, 2016 for Project R2014-00881/Conditional Use Permit 2014-00037 [http://planning.lacounty.gov/assets/upl/case/r2014-00881_bos-package.pdf]). Nothing in Project R2014-00881 or Conditional Use Permit 2014-00037 can be construed to limit the fast food drive through business to a "Primo Burger".

[2] See Condition #7 of the Board of Supervisors' action taken November 15, 2016 found here: http://planning.lacounty.gov/assets/upl/case/r2014-00881_bos-package.pdf

3. *Assuming arguendo* that the approval of Project R2014-00881/Conditional Use Permit 2014-00037 still "stands" despite the lack of a CEQA document, this would oblige the County to proceed with the project by issuing ministerial grading and building permits while it contemporaneously prepares the requisite CEQA document. This would commit the County to a definite a course of action by allowing the project to proceed regardless of the environmental impacts that it may create and without consideration of any feasible measures that could be implemented to mitigate such impacts. Time and again, the Courts have held that such circumstances render CEQA meaningless because they sidestep all feasible alternatives and mitigation measures, *including the alternative of not going forward with the project* and thus reduce CEQA to a process that merely generates paper[3]. Moreover, it is a fundamental tenet of CEQA that no discretionary project is ever deemed "approved" until an environmental document is first prepared, certified, and adopted pursuant to a public hearing. On this basis alone, the County is statutorily barred from declaring that Project R2014-00881/Conditional Use Permit 2014-00037 is "approved". Another reason that CEQA does not allow Lead Agencies to "approve" a project before preparing and certifying a CEQA document is because the Lead Agency is prohibited from using the environmental review process to justify or rationalize a decision it has already made.

For all these reasons, CEQA clearly establishes that Project R2014-00881/ Conditional Use Permit 2014-00037 is not "approved" and it cannot be deemed "approved" until an adequate environmental review is conducted, a public hearing is convened, and the decisionmaker finds that the project is consistent with adopted planning documents and that significant adverse impacts have been feasibly mitigated. None of these activities have taken place, therefore Project R2014-00881/Conditional Use Permit. 2014-00037 does not fall within the scope of exceptions that are "carved out" by the proposed ordinance.

Since inception of Project R2014-00881 and Conditional Use Permit 2014-00037, the County has manifested a clear and substantial commitment to proceed with the project as proposed by the applicant *no matter what*, and toward this end, has perpetrated the following astonishing acts:

- Failed to disclose that the fast food drive-through business included with Project R2014-00881/Conditional Use Permit 2014-00037 will generate so much local traffic that it warrants traffic signals at a minimum of 2 intersections. Current traffic levels do not warrant traffic signals; however, these conditions change significantly with the additional fast food drive-through development[4].

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[3] *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 394, *Cedar Fair, L.P. v. City of Santa Clara* (2011) 194 Cal.App.4th 1150, 1170, *Natural Resources Defense Council, Inc. v. City of Los Angeles* (2002) 103 Cal.App.4th 268, 271, 126 Cal.Rptr.2d 615.

[4] See Traffic Signal Warrant Analyses submitted with public comments pursuant to Project R2014-00881/Conditional Use Permit 2014-00037.

- Withheld the final traffic study report from the public[5] which showed that traffic levels will be much higher than what the public was informed AND that the fast food drive-through will add 76 seconds to the already lengthy "wait time" that parents experience in the morning when exiting the High Desert Middle School after dropping off their children. To this day, *the final traffic study has still not been made publicly available* and it is ***not*** included with the electronic "record" that is posted on the Department of Regional Planning ("DRP") website[6].

- Prepared an impact analysis study that completely ignored the increased pedestrian and equestrian hazards that would result from the substantially higher traffic levels generated by the fast food drive-through element of Project R2014-00881/Conditional Use Permit 2014-00037.

All of these activities are indicative of the considerable bureaucratic momentum that the County has already placed behind Project R2014-00881/Conditional Use Permit 2014-00037 to ensure that it proceeds *regardless of the impacts that it creates.* And, with the proposed CSD amendment, the County reveals a renewed determination to "clear a path" for construction of the fast food drive-through portion of the Project *before conducting an environmental analysis.* Certainly, the County is expending considerable effort to "fast track" approval of the proposed CSD amendment[7], and thus adding substantially to the considerable momentum that the County has already put into Project R2014-00881/ Conditional Use Permit 2014-00037. These actions are contrary to the California Supreme Court's admonition that "postponing environmental analysis can permit bureaucratic and financial momentum to build irresistibly behind a proposed project, thus providing a strong incentive to ignore environmental concerns", and they render the environmental document a "post hoc rationalization" rather than a "document of accountability"[8].

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[5] The Final Traffic Study that was approved by the Department of Public Works for Project R2014-00881/Conditional Use Permit 2014-00037 is dated August 4, 2015; the County did not make it available until 2017, and only after SORT paid a considerable sum for a copy of the project "record".

[6] The Traffic Study made available to the public and posted by DRP for Project R2014-00881/ Conditional Use Permit 2014-00037 [http://planning.lacounty.gov/assets/upl/case/r2014-00881_traffic-study.pdf] is dated January 20, 2015 and is not the final Traffic Study that was approved by the Department of Public Works ("DPW"). The final Traffic Study is dated August 4, 2015 and it is maintained by DPW (not DRP); it differs substantially from the January 20, 2015 traffic study that was made available to the public by DRP.

[7] The approval process set up for the proposed CSD Amendment is the fastest that SORT has ever observed; the CSD Amendment was announced in April and by mid-June it had moved quickly to a scheduled RPC hearing. If the RPC approves the CSD amendment in July, SORT anticipates that it will go before the Board before the end of summer. This "whirlwind" schedule is indicative of the County's unwavering commitment to move forward with construction on Project R2014-00881 and Conditional Use Permit 2014-00037 as quickly as possible and regardless of impacts.

[8] *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116.

The County has already demonstrated a clear propensity to ignore the environmental concerns posed by Project R2014-00881 and Conditional Use Permit 2014-00037 because the Negative Declaration that was certified and adopted by the County in 2016 failed to disclose known traffic impacts and signal requirements and it failed to address known pedestrian hazards. In fact, it was on that basis that the Court set the Negative Declaration aside. Now however, it seems that the County intends to sidestep CEQA altogether by using the proposed CSD amendment as a "shield" to simply assert that Project R2014-00881 and Conditional Use Permit 2014-00037 are approved "as is" and thereby clear a path for construction to begin. In many ways, the circumstances surrounding the County's actions regarding Project R2014-00881 and Conditional Use Permit 2014-00037 are far more serious than the circumstances addressed by the Supreme Court in *Save Tara*; at least the lead agency in *Save Tara* always intended to prepare an environmental document before declaring the project "approved". Such is not the case here, because the County is using the CSD Amendment to establish that Project R2014-00881/Conditional Use Permit 2014-00037 is already "approved" *without any environmental document*.

It is clear from the proposed CSD amendment that the County deems the fast food drive-through portion of Project R2014-00881/ Conditional Use Permit 2014-00037 to be "approved" even though it has no CEQA document; from this, SORT presumes that the County intends to issue grading and building permits for the fast food drive-through as soon as the CSD amendment becomes effective. SORT warns the County that such activities constitute a gross violation of CEQA, and we will pursue every available remedy to ensure that construction activities do not proceed until CEQA compliance is achieved.

If you have any questions, please do not hesitate to contact me at AirSpecial@aol.com.

Sincerely,

/S/ Jacqueline Ayer
Jacqueline Ayer
Director, Save Our Rural Town